

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 31 2000

PATRICK FISHER
Clerk

EDWIN J. GUNN,

Petitioner - Appellant,
vs.

J.W. BOOKER, United States
Penitentiary, Leavenworth,

Respondent - Appellee.

No. 99-3345
(D.C. No. 99-CV-3320-RDR)
(D. Kan.)

ORDER AND JUDGMENT*

Before **BRORBY, KELLY, and MURPHY**, Circuit Judges.**

Mr. Gunn, an inmate appearing pro se, appeals from the denial of his 28 U.S.C. § 2241 motion. He was convicted on a jury verdict of being a felon in possession of a firearm, 18 U.S.C. § 922(g)(1), and was sentenced as an armed career criminal, 18 U.S.C. § 924(e). See United States v. Gunn, 962 F. Supp. 214 (D. Mass. 1997). His conviction and sentence were upheld by the First Circuit in

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

** After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1 (G). The cause is therefore ordered submitted without oral argument.

United States v. Gunn, No. 97-1498, 1998 WL 60404 (1st Cir. Feb. 10, 1998).

Mr. Gunn then sought relief through two § 2255 motions which were denied. In the current § 2241 appeal, he claims, as he did on direct appeal, that he had not committed a felony (as defined by Massachusetts law) for purposes of his 18 U.S.C. § 922(g)(1) conviction. We affirm.

§ 2255 is the exclusive remedy for testing the validity of a judgment and sentence, unless there is a showing that such remedy is inadequate or ineffective. See Bradshaw v. Story, 86 F.3d 164, 166 (10th Cir. 1996). Mr. Gunn has not alleged any way in which § 2255 was an inadequate or ineffective avenue for testing his conviction. Therefore, his § 2241 motion must fail and he has failed to establish any grounds warranting a successive § 2255 motion. See 28 U.S.C. § 2244.

AFFIRMED. Mr. Gunn's motion to amend is denied.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge